

72-6-203 Authority to enter into public-private partnership agreements for tollways.

- (1) Subject to the provisions of this part, the department may:
 - (a) enter into a tollway development agreement with one or more public or private entities to permit the entity or entities to, independently or jointly with the department, study, perform predevelopment activities, design, finance, acquire, construct, reconstruct, maintain, repair, operate, extend, or expand a tollway facility;
 - (b) enter into an agreement with other public agencies or private entities to independently or jointly provide services, or to study the feasibility of a tollway; and
 - (c) negotiate the terms of private participation in a tollway, including:
 - (i) methods to determine the applicable cost, profit, and revenue distribution between the private participants and the department;
 - (ii) a reasonable method to determine toll rates or user fees, including:
 - (A) identification of vehicle or user classifications, or both, for toll rates;
 - (B) the original proposed toll rate or user fee for the tollway facility;
 - (C) proposed toll rate or user fee increases; and
 - (D) a maximum toll rate or user fee for the tollway facility;
 - (iii) acceptable safety and policing standards; and
 - (iv) other applicable professional, consulting, design, engineering, construction, operation and maintenance standards, requirements, expenses, and costs;
 - (d) grant to a private entity through a tollway development agreement the right to impose and collect tolls or user fees under Section 72-6-118 and the right to enforce toll violations; and
 - (e) provide to the private entity, on mutually agreed terms, services in support of the tollway development, operation, and maintenance including planning, environmental review, design, right-of-way acquisition, oversight, inspection and monitoring, maintenance, and policing.
- (2) The department shall engage outside consultants and counsel to:
 - (a) provide the state with professional services, including legal and financial guidance, to develop rules and guidelines for public-private partnerships;
 - (b) assist the department in evaluating the risks and benefits of a proposed public-private partnership; and
 - (c) assist in the selection and terms of a tollway development agreement.
- (3) A tollway development agreement entered into under this section shall include:
 - (a) a provision for the application of tolls and other operating revenues to the payment of operating and maintenance costs, indebtedness by the private entity for the tollway, reserves for reconstruction, rehabilitation, resurfacing and restoration, return on equity or investment, and sums owing the department;
 - (b) a provision authorizing the department to purchase, under terms agreed to by the parties, the interest of a private participant in a tollway development agreement; and
 - (c) a provision requiring that, at the termination of the tollway development agreement, the tollway project shall:
 - (i) be in a state of proper maintenance as outlined in the agreement and determined by the department; and
 - (ii) be returned to the department in satisfactory condition at no further cost to the department.
- (4) A tollway development agreement entered into under this section may include:
 - (a) allocations of liability, risk, and responsibility;
 - (b) combinations of public and private funding and financing;
 - (c) compensation to the department for the grant of the tollway development agreement or the right to impose and collect tolls;

- (d) participation by the department in tollway revenue, proceeds of refinancings and proceeds of sale of the tollway or interests in the private entity;
 - (e) extensions of time for, and exceptions to, performance by the private entity and compensation from the department to the private entity, due to stated events or circumstances;
 - (f) requirements for performance security, including payment and performance bonds, letters of credit, security deposits, guarantees, and similar protections;
 - (g) rights and obligations to expand the tollway, extend the tollway, add capacity improvements, add intelligent transportation systems, and otherwise upgrade the tollway during the term of the tollway development agreement;
 - (h) alternative dispute resolution procedures;
 - (i) limitations on liability and waivers of consequential damages;
 - (j) lender rights and protections; and
 - (k) other terms necessary or desirable to attract private investment and protect the department's interests.
- (5)
- (a) A tollway that is the subject of a tollway development agreement with a private entity, including the facilities acquired or constructed on the tollway, is public property and title to the tollway and facilities is vested in the state.
 - (b) A tollway that is the subject of a tollway development agreement is part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and other purposes.
 - (c) The department may enter into one or more agreements that provide for:
 - (i) the lease of rights-of-way, improvements, and all or any portion of the appurtenances over and under the tollway facility to the private entity for a term ending not later than 99 years after commencement of revenue operations, provided that the agreement provides upon termination for reversion of the leased property, together with the right to impose and collect tolls, to the department;
 - (ii) the granting of easements;
 - (iii) the issuance of franchises, licenses, or permits; or
 - (iv) any other lawful uses to enable a private entity to construct, operate, maintain, or finance a tollway.

Enacted by Chapter 36, 2006 General Session